

THIRD-PARTY SICK PAY

Section 931.5 of the California Unemployment Insurance Code provides that third-party sick payments are "wages" for the purpose of reporting Unemployment Insurance (UI) and Employment Training Tax (ETT). These payments are also reportable as Personal Income Tax (PIT) wages, which are wages subject to California PIT. Even though PIT withholding on these wages is not mandatory, the wages are considered taxable income to the recipient and must be reported on the recipient's California personal income tax return. Without exception, payments for third-party sick pay are not subject to State Disability Insurance.

What Is Third-Party Sick Pay?

Third-party payers such as insurance companies or trusts pay sick pay in place of wages. These payments are made to employees during any period when the employee is absent from work due to illness or injury under a plan established for a participating employer. These payments are sometimes known as short-term disability payments.

What Is Not Considered Third-Party Sick Pay?

- Payments made by a third party when the employee has paid the premiums are not third-party sick pay.
- Sick pay which is made after the first six calendar months following the last calendar month in which the employee performed services for the employer are not considered third-party sick pay.
- A third party who makes sick payments to an employee as an agent for the employer is not considered a third-party payer. The determining factor as to whether a third party is an agent of the employer is if the third party bears any insurance risk. If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party is an agent of the employer. Sick payments made by an agent for an employer are defined as "wages" paid by the employer. The employer is responsible for reporting any UI, ETT, SDI, and PIT withholdings that are due. The payments are reportable as both total subject wages and PIT wages.
- Payments received under a workers' compensation law and SDI payments are not considered third-party sick pay.

WHO IS RESPONSIBLE FOR REPORTING PAYMENTS?

The third-party payer must notify the last employer who is a member of the plan and for whom the services were performed within 15 days of payment. The last employer must be provided with the following:

- The name and Social Security Number (SSN) of the recipient of the sick pay.
- The amount of gross wages (sick pay) paid pursuant to the plan.

When the third-party payer meets the above conditions, the last employer is required to pay any UI and ETT due on the sick pay and report both subject wages and PIT wages.

If the sick payments are made under a contract of insurance to a multiple employer plan, the third-party payer must notify the plan within 15 days. The plan then has six business days after the receipt of the notification to notify the last employer. If the plan does not meet the notification requirement, the plan then becomes the employer and must report the sick pay and PIT wages and pay any applicable taxes.

IMPORTANT: If the third-party payer does not notify either the last employer or the plan within 15 days of payment, the third-party payer is considered the employer. The third party would then be required to report the wages and pay UI and ETT contributions. The third-party payer would also be responsible for issuing the recipient's W-2 which would include his or her third-party sick pay, voluntary PIT withholding, and PIT wages.

PROCEDURES

Employer

- Wages are considered paid when you receive the notice from the third-party payer or the plan that third-party sick pay has been paid.
- In addition to submitting a DE 6, Quarterly Wage and Withholding Report, listing all regular wages paid by you as an employer, send a separate DE 6 listing all sick pay paid by the third-party payer as total subject wages and PIT wages. Include the SSN and name of each recipient. Note "Third-Party Sick Pay" at the top of the form. Enter your account number, business name, and address in the appropriate blocks.

- Include all sick payments in the total subject wages on Line C of the DE 7, Annual Reconciliation Statement.
- Include third-party sick pay when determining the amount entered for UI taxable wages on Line D of the DE 7.
- Do not include third-party sick pay when determining the amount entered on Line F of the DE 7 (SDI taxable wages).
- Do not include PIT withheld and reported by a third-party payer on Line G of the DE 7 (California Personal Income Tax Withheld).
- You may prepare two W-2 forms for each of your employees (one for third-party sick pay and withholding and one for all other wages and withholding) or include the sick pay and withholding with the other wages and withholding on one W-2.

- Do not include third-party sick pay when determining the amount entered on Lines C, D, E, and F, of the DE 7.
- Include PIT withheld and reported on Line G of the DE 7.

A separate account number is not necessary. You may report PIT withholding using your current employer account number.

On or before January 15 of each year, you must furnish a written statement to the last employer showing the following:

- The name and SSN of each sick pay recipient during the prior calendar year.
- The total amount of third-party sick pay paid to each recipient during the prior calendar year.
- The total amount of PIT withheld and deposited with EDD for each sick pay recipient.

Third-Party Sick Payers

The procedures below apply to third-party payers who notify the last employer within 15 days of each payment of sick pay:

- The sick pay recipient may voluntarily request that PIT be withheld. The recipient must submit a written request to you including his/her SSN and the amount to be withheld, or a DE 4S or Form W-4S.
- Report the recipient's voluntary PIT withholding on line I on the DE 6.

ADDITIONAL INFORMATION

If you have questions, you may contact your local Employment Tax Customer Service Office. Telephone numbers are listed under Employment Development Department in the "State Government Offices" section of your local telephone directory. Offices are also listed on the EDD Internet site at www.edd.ca.gov under "Department Directory."

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.